In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.441 of 2007

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Date of decision:8.3.2007

Fateh Mohd.

.....Petitioner

v.

Jaheer and others

.....Respondents

....

Present: Mr. Ram Darshan Yadav, Advocate for the petitioner.

.....

S.S. Saron, J.

This criminal revision petition has been filed against the order dated 13.2.2007 passed by the learned Sessions Judge, Gurgaon whereby the application filed by the prosecution under Section 319 of the Code of Criminal Procedure (`Cr.P.C.' - for short) for summoning respondents No.1 to 3 has been dismissed. The FIR in the case was recorded on the statement of Fateh Mohd. father of the deceased Femina alias Kemida. It has been alleged that the daughter of the complainant, namely, Femina alias Kemida was engaged with Jahul son of Arjun and his younger daughter Sajida was engaged with Jaheer. Jahul and Jaheer are brothers being the sons of Arjun. After the engagement had broken, Jahul son of Arjun ran away with the daughter of the complainant by enticing her. Later they got married without the consent of the complainant. It has been alleged that the daughter of the complainant was tortured by her husband Jahul, her brother-in-law Jaheer

(respondent No.1), father-in-law Arjun (respondent No.2) and mother-in-law Majidan (respondent No.3) for dowry. During investigation in the case, respondents No.1 to 3 were found innocent and were placed in column No.2 of the charge report that was filed. The petitioner, who is the complainant, was examined by the learned trial Court on 8.1.2007 as PW-6. On the basis of his statement the application under Section 319 Cr.P.C. was filed through the Public Prosecutor before the trial Court which, as already noticed, has been dismissed and the said order is assailed in the present petition.

Learned counsel for the petitioner contends that the order passed by the learned trial Court dismissing the application is erroneous, inasmuch as, the complainant Fateh Mohd. (PW-6) has clearly brought out that apart from Jahul, respondents No.1 to 3 also taunted his daughter that the complainant had lowered their reputation in the society. Besides, respondents No.1 to 3 used to belabour the deceased. It is submitted that keeping in view the incriminating material on record respondents No.1 to 3 were also liable to be summoned as additional accused to face trial.

After having given my thoughtful consideration to the matter and perusing the paper book, I find no merit in the contention of the learned counsel for the petitioner. The learned trial Court has found that Jahul husband of the deceased was living separate from his family. Therefore, it did not appear to be a case where it could be said that there was sufficient evidence on the file to proceed against respondents No.1 to 3. Reliance was placed on the statement of Khursidan, the mother of the deceased. She in her statement under Section 161 Cr.P.C. stated that the deceased and her husband had been living separate in the fields from the accused. On the

strength of the same it was observed that it has been routine now to involve as many as persons as possible. A perusal of the statement of the complainant Fateh Mohd. (PW-6) in fact shows that it is an improvement from the statement on the basis of which FIR has been registered. While appearing as PW-6, Fateh Mohd. has stated that respondents No.1 to 3 used to demand 4 Kgs. silver, 6 Tolas gold, one Splendour motorcycle and a colour TV besides, Rs.60,000/- in cash. These demands do not find mention in the statement on the basis of which FIR has been registered. Therefore, there appears to be an improvement from the statement made earlier. Consequently, no ground is made out to interfere with the order dated 13.2.2007 passed by the learned Sessions Judge, Gurgaon declining to summon respondents No.1 to 3 as additional accused in terms of Section 319 Cr.P.C.

For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed. However, nothing stated herein shall be taken as an expression on the merits of the case which is pending before the trial Court.

March 8, 2007. **(S.S. Saron)**
Judge

hsp